

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANGELA RENEE GARRETT,	:	APPEAL NO. C-090282
		TRIAL NO. A-0702111
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
SHARON L. GILL	:	
and	:	
JENRICK FELTNER,	:	
Defendants-Appellees,	:	
and	:	
AMERICAN FAMILY MUTUAL	:	
INSURANCE COMPANY	:	
and	:	
NATIONWIDE MUTUAL FIRE	:	
INSURANCE COMPANY,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Angela Renee Garrett appeals from the trial court's grant of summary judgment to defendants-appellees Sharon Gill and Jenrick Feltner. In March

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

of 2005, Garrett had been a passenger in an automobile driven by Feltner. The vehicle was involved in an accident, and Garrett was injured. On March 5, 2007, she filed suit against Gill, Feltner, Nationwide Mutual Fire Insurance Company, and American Family Mutual Insurance Company. Nationwide insured Gill and Feltner, and Garrett herself was an insured of American Family. Garrett was initially unable to obtain service upon Gill and Feltner, and on March 19, 2008, a special process server was appointed. The process server successfully served Gill and Feltner with a copy of the complaint and summons.

Gill and Feltner filed a motion to dismiss the claims against them. The trial court converted their motion into one for summary judgment and then granted the motion after concluding that Garrett had not perfected service upon Gill and Feltner within the allotted statutory period. In its entry granting summary judgment, the trial court included the following language: “This is a final appealable order. The remainder of this suit, pending against Defendants American Family and improperly named Defendant Nationwide Mutual Fire Insurance Company, is still pending before this court.”

After Garrett filed her notice of appeal, the trial court additionally granted a motion to dismiss filed by Nationwide. Claims still remain pending against American Family.

Garrett has raised three assignments of error on appeal, but has asked this court to determine, as a threshold matter, whether the trial court’s entry is a final and appealable order. Gill and Feltner argue that the entry is not final and appealable. We agree.

This court has stated that “[t]he denial or granting of summary judgment with respect to fewer than all of the defendants, when affecting parties’ substantial rights,

constitutes a final appealable order under R.C. 2505.02 with the addition of Civ.R. 54(B) language. An order that resolves fewer than all the claims of all the parties in an action may constitute a final appealable order if it contains the words ‘there is no just reason for delay’ under Civ.R. 54(B), and if it otherwise qualifies as final and appealable under R.C. 2505.02.”²

In this case, the trial court’s order did not resolve the claims against all of the parties. Claims remained pending against the two insurance company defendants. And although judgment has since been entered for one insurance company, claims still remain pending against the other. The trial court’s entry states that “this is a final appealable order,” but it does not include the required language under Civ.R. 54(B). The Ohio Supreme Court has held that “[a] court may not bypass the requirement to include the express language of Civ.R. 54(B) simply by designating the order as final.”³

Because the trial court’s order lacks the requisite language under Civ.R. 54(B), it is not final and appealable. Consequently, we are without jurisdiction to entertain this appeal. For that reason, the appeal is dismissed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 21, 2010

per order of the Court _____.
Presiding Judge

² *Wiley v. Good Samaritan Hosp.*, 1st Dist. Nos. C-030131 and C-030181, 2004-Ohio-763, ¶18 (internal citation omitted).

³ *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, ¶18.